IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7066 OF 2004

Sachin Jairam Koli .. Petitioner

Versus

1. State of Maharashtra & Ors. .. Respondents

Mr.R.K.Mendadkar for the petitioner

Mr.C.R.Sonawane, A.G.P. for respondent no. 1 to 4

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 2ND SEPTEMBER, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. The petitioner is challenging the order passed by the Caste Scrutiny Committee dated 16th August, 2003. By the said order the caste certificate of the petitioner has been declared as invalid and caste claim is rejected. Some of the facts briefly stated are as under:

2. On 30th April 2002, the respondent no.2 invalidated the caste certificate of the petitioner

as belonging to Mahadev Koli, Scheduled Tribe. Against the said order of the respondent no.2 Committee, the petitioner filed the writ petition in this Court being Writ Petition No.5345 of 2002. By and order and judgment dated 16th October 2002 the said order was set aside and the matter was remanded back to the authorities particularly with a direction to consider the case of the petitioner.

3. The said writ petition was essentially granted on the ground that the Committee has committed an error in comparing the birth register maintained by the Thane Municipal Corporation with the register maintained by the Civil Hospital to determine the caste of the petitioner. By the said order, this court directed the respondent no.2 Committee to decide the said matter afresh in accordance with law.

4. Pursuant to the said remand, the Caste Scrutiny Committee has considered the case of the petitioner afresh and by the impugned order dated 16th August 2003 rejected the claim of the petitioner and

invalidated the caste claim of the petitioner for validation of caste certificate issued in his favour. It is this order which the petitioner has challenged in the present writ petition.

5. We have heard the learned counsel for the petitioner and perused the order. The Caste Scrutiny Committee has given the findings of facts in the impugned order which reads as under:

> "3. Since, the applicant and the Hon'ble High Court have relied upon a birth record of Thane Municipal Corporation in respect of applicant's father vigilance enquiry was conducted by the vigilance officer and he submitted his report to the committee on 5/2/2002 along with the remarks. It was stated in the enquiry report that no entry of persons bearing surname Koli except the entry of applicant's father from 1921 to 1948 was made to the effect of belonging to Mahadeo Koli Community. Similarly, it was also disciphered that on particular page of the birth register where applicant's father's entry appear entries No.130 to 138 were re-written by erasing earlier entries.
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> 4. The report of vigilance enquiry was served the applicant and he was asked to appear for personal hearing on 17/4/2003. The applicant furnished his written reply on 7/3/2003 and appeared for personal hearing on 17/4/2003 along with his father. Similarly, Shri A.S.Khot, Sub registrar, birth and death, Thane Municipal Corporation was also

present along with original birth register. The committee perused the record and affirmed the finding of the vigilance officer that all entries from entry No. 130 to 138 of the particular page were re-written by erasing earlier entries. However, entry No.129 i.e. initial entry on this page is inside the binding part of the register which only was remained intact i.e. in original ink and hand writing. This fabrication is visible even to naked eyes but Thane Municipal Corporation has denied it in their letter, dated 20/6/2003. Thus, the birth record in respect of applicant's father is clearly manipulated one and it can not have any positive effect on his Scheduled Tribe claim.

"NOTE:-

1) It comes to notice that the word So.Ko are erased.

2) The Head Master has mentioned in remarks column against the entry at register no.192 that, the words So.Ko are erased against the register no.2 the words Mahadeo is mentioned in different handwriting in caste column.

3) Against the entry at register no.492 the Mahadeo Koli words are written by overwriting.

III) An extract of school admission register, issued by the Head Master, Brahman Shikshan Mandal Maharashtra Vidyalay, Veer Savarkar Path, Thane related to the following persons."

6. On the aforesaid finding of facts, the claim of the petitioner has been rejected. The learned

counsel appearing for the petitioner strenuously argued before us that the Caste Scrutiny Committee had no reason to go into the validity of the birth certificate produced by the Thane Municipal Corporation particularly in view of the order passed by the Division Bench of this court on 16th October 2002. According to the learned counsel for the petitioner the issue as to the validity of the birth register has been concluded by the Division Bench order dated 16th October 2002.

7. We have perused the said order dated 16th October 2002 which is annexed as Exhibit (D) to the petition. We do not find any such finding in the said order. On the contrary the entire issue has been left open for the Committee to decide afresh in accordance with law. Obviously while reconsidering the matter afresh, the Committee was required to consider the validity or otherwise of the documents produced before it for considering the caste claim of the petitioner. In the light of the fact that the Committee has found that the documents produced before them are tampered with

and / or of highly doubtful character, the Committee has refused to rely upon the same. The findings of the Committee that the documents are tampered with are findings of facts. It is not open for us in writ jurisdiction under Article 226 of the Constitution of India to re-appreciate and or reconsider the said findings and or to call for the original documents and examine documents ourselves. We have no reason to interfere with the finding arrived at by the Scrutiny Committee as the finding of facts by the committee are final. We do not see any reason to come to the different findings then that arrived at by the Committee. We are of the further view that if the said documents are eliminated from the consideration then in that event there is nothing on the basis of which the claim of the petitioner can be sustained at all.

8. In the light of the aforesaid facts, we are of the opinion that the present petition requires to be dismissed and we accordingly dismiss the same. There shall be no order as to costs.